



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0433; FRL-8683-01-R8]

Approval and Promulgation of Implementation Plans; North Dakota; Revisions to Permitting Regulations Unrelated to Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In accordance with section 110 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by North Dakota on August 3, 2020. The revisions contain amendments to the State's Air Pollution Control Regulations and to the State's Legal Authority.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2021-0433, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-312-6227, email address: leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On August 3, 2020, the State of North Dakota submitted SIP revisions containing amendments to North Dakota Administrative Code (NDAC), Article 33.1-15 (Air Pollution Control) located in North Dakota’s EPA-Approved Regulations. Article 33.1-15 consists of 25 chapters numbered from 33.1-15-01 through 33.1-15-25. Revisions to 33.1-15-25 (Regional Haze Requirements) were acted on in a separate rulemaking.¹ North Dakota is also revising section 2.15 (Respecting Boards) located in North Dakota’s EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures. These revisions became effective as a matter of

¹ The EPA approved North Dakota’s rule revisions to chapter 33.1-15-25 (regional haze) on June 8, 2021 (86 FR 30387).

State law on July 1, 2020. We are proposing to approve these revisions, except for the previously approved regional haze provisions.

II. The EPA's Evaluation

A. Revisions to Chapter 33.1-15-01 (General Provisions)

1) Section 33.1-15-01-01 (Purpose)

*Line 3 – A semicolon is added after the word “property.”

This revision is approvable, as it is administrative in nature.

2) Section 33.1-15-01-04 (Definitions)

*In Section 33.1-15-01-04-04.45, a comma is added after “emission.”

This revision is approvable, as it is administrative in nature.

*In Section 33.1-15-01-04-04.52, the date for incorporation by reference for the definition of “volatile organic compounds” (VOC’s) is changes from July 1, 2015 to July 1, 2019.

This revision is approvable, as it keeps North Dakota’s definition current with the federal definition of VOCs. North Dakota’s regulation located in section 33.1-15-01-04-04.52 states:

“Volatile Organic Compounds” means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on July 1, 2015, which is incorporated by reference.”

This revision reflects the current EPA definition of VOCs in 40 CFR 51.100(s), which was last revised by the EPA on November 28, 2018 (83 FR 61127). In addition, North Dakota incorporates by reference 40 CFR 52.21 for their Prevention of Significant Deterioration (PSD) regulations. The definition of VOCs located in 40 CFR 52.21(a)(30) states:

“Volatile organic compounds (VOC) is as defined in 40 CFR 51.100(s) of this chapter.”

As such, this revision also keeps North Dakota's PSD regulation of VOCs current with the federal definition of VOCs.

3) Section 33.1-15-01-05 (Abbreviations)

* For the abbreviation of Abbreviation of PM_{10} , the words "a nominal" are added.

This revision is approvable, as it is administrative in nature.

B. Revisions to Chapter 33.1-15-02 (Ambient Air Quality Standards, Table 1)

1) Table 1

* In Table 1, for fine particulates ($PM_{2.5}$) the determination of compliance is being clarified by adding the phrase "three-year average" to the annual standard and the phrase "three-year average of the annual" is added to the 24-hour standard.

These revisions are approvable, as this language corresponds with the language found in 40 CFR part 50, appendix N (Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$). Appendix N states the data handling necessary for determining when the National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ are met, specifically for the primary and secondary annual and 24-hour $PM_{2.5}$ NAAQS specified in 40 CFR 50.7, 50.13 and 50.18.

Appendix N states that there are two separate design values (DVs) for determining compliance with the NAAQS. Design values are the 3-year average NAAQS metrics which are compared to the NAAQS levels to determine which monitoring site meets or does not meet the NAAQS. Appendix N specifies two separate DVs:

- 1) The 3-year average of $PM_{2.5}$ annual mean mass concentrations for each monitoring site; and
- 2) The 3-year average of annual 98th percentile 24-hour average.

2) Table 1

* In Table 1, North Dakota is revising its maximum permissible concentration for ozone from 0.075 parts per million (ppm) to 0.070 ppm.

This revision is approvable. In 2015, the EPA promulgated a revised ozone NAAQS of 0.070 parts per million (ppm). (See Final Rule, National Ambient Air Quality Standard for Ozone, 80 FR 65292, October 26, 2015.) This rulemaking revised the maximum permissible concentration for ozone to 0.070 ppm. When a new or revised NAAQS is promulgated, the CAA requires each state to submit a SIP revision to incorporate the new standard. North Dakota revised Table 1 to reflect the 2015 ozone NAAQS of 0.070 ppm.

C. Revisions to Chapter 33.1-15-03 (Restriction of Emission of Visible Air Contaminants)

* The title of the chapter is being revised to remove an “m” from “emissions.”

This revision is approvable, as it is administrative in nature.

D. Revisions to Chapter 33.1-15-14 (Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate)

1) Section 33.1-15-14-01.1.2h

* In paragraph 33.1-15-14-01.1.2h, the word “onsite” is added twice.

This revision is approvable as it is administrative in nature.

2) Section 33.1-15-14-02.4a

* In subdivision 33.1-15-14-02.4a, the date for incorporation by reference of PSD modeling guidance by referring to 40 CFR part 51, appendix W (Guideline on Air Quality Models) as it existed on July 1, 2019, and the reference to the North Dakota Modeling Guidance is deleted.

This revision is approvable, as the State is adopting federal guidelines for determining the effects on ambient air quality related to an application for a permit to construct, and this revision deletes the State’s own guidance on air quality modeling.

3) Chapter 33-15-14-02.5

* In subsection 33.1-15-14-02.5, line 2, the word “an” is added before application.

This revision is approvable, as it is administrative in nature.

4) Chapter 33.1-15-14-02.5a

* In the subdivision 33.1-15-14-02.5a, the significant impact level (SIL) for annual PM_{2.5} emissions is revised to 0.2 micrograms per cubic meter, and a SIL for 8-hour ozone of 2.0 micrograms per cubic meter is added.

These revisions are approvable. On October 20, 2010, the EPA promulgated a final rulemaking titled “Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 micrometers – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentrations (SMCs),” (75 FR 64864). This rulemaking revised the SIL for the annual PM_{2.5} to 0.3 micrograms per cubic meter for Class II and Class III areas, and 0.06 micrograms per cubic meter for Class I areas.

However, on December 17, 2010, the Sierra Club petitioned the Court to review the 2010 PM_{2.5} SILs and SMC final rule. On January 22, 2013, the Court granted a request from the EPA to vacate and remand to the EPA portions of the PSD regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) establishing the SILs for PM_{2.5} so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. *Sierra Club v. EPA*, 705 F.3d 458, 463–64 (D.C. Cir. 2013). As a result, on December 9, 2013, EPA issued a final rule that removes the PM_{2.5} SILs from EPA’s PSD regulations (PM_{2.5} Vacated Elements rulemaking). On April 17, 2018, the EPA issued a guidance memo titled “Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program” (See docket), which provided guidance on compliance demonstration tools for use with ozone and PM_{2.5} in the PSD program. This guidance can be used to identify a SIL for each ozone and PM_{2.5} NAAQS. Permitting authorities may use these values to help determine whether a proposed PSD source causes or contributes to a violation of the corresponding NAAQS. The guidance recommends a SIL of 0.2 micrograms per cubic meter for annual PM_{2.5} and a SIL of 1.0 parts per billion (ppb) for 8-hour ozone. North

Dakota's new SIL for 8-hour ozone is 2.0 micrograms per cubic meter, which converts to one pbb (see docket for conversion.)

5) Chapter 33.1-15-14-02.8

* In subsection 33.1-15-14-02.8, line 3, the word "or" is being changed to "and."

This revision is approvable, as it is requiring an affirmative review of the requirements in both subsection 5(a) and 5(b) of this subsection before granting a permit to construct, as opposed to one or the other. Subsection 5(a) and 5(b) contain requirements pertaining to the department's review of an application for a permit to construct.

E. Revisions to Chapter 33.1-15-15 (Prevention of Significant Deterioration of Air Quality)

1) Chapter 33.1-15-01.2

* In section 33.1-15-01.2, the date for incorporation by reference is updated to July 1, 2019. In addition, the phrase "or the administrator's authorized representative" is added.

This revision is approvable, as it expands the definition of "administrator of the United States environmental protection agency" to include "or the administrator's authorized representative."

2) Chapter 33.1-15-01.2(q)

* In section 33.1-15-01.2(q), public participation, paragraph (q)(2)(c) is being revised to add the phrase "and by a notice on the department's website."

This phrase is approvable, as it is in compliance with the requirements in 40 CFR 52.21(q), which states:

"The administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section."

40 CFR part 124(xi)(2)(iii) outlines the requirements as it relates to publishing PSD permits for the duration of the public comment period. 40 CFR part 124(xi)(2)(iii)(B) states:

“The director shall notify the public...for the duration of the public comment period, on a public Web site identified by the director.”

3) Chapter 33.1-15-01.2(q)

* In section 33.1-15-01.2(q), public participation, paragraph (q)(2)(c) is being revised to add the phrase “draft permit to construct.”

This phrase is approvable, as it strengthens the requirement as to what is to be published during the public comment period.

F. Revisions to Chapter 33.1-15-19 (Visibility Protection)

* In section 33.1-15-19-01.1 and 33.1-15-19-01.2, line 2, the reference to subsection 33.1-15-15-01 is corrected by adding “.2.”

This revision is approvable, as it is administrative in nature.

G. Revisions to Chapter 33.1-15-20 (Control of Emissions from Oil and Gas Well Production Facilities)

1) Chapter 33.1-15-20-04.2

* In section 33.1-15-20-04.2, the paragraph is revised to indicate that all flares at a production facility, not just those combusting gas containing hydrogen sulfide, must be maintained and operated in good working order. On the last line, “sulfur dioxide” is replaced with “air contaminants as.”

This revision is approvable, as it expands the amount of flares which must be maintained and operated in good working order.

2) Section 33.1-15-20-04.3

* In section 33.1-15-20-04.3, the word “volatile” is removed to be consistent with Chapter 33.1-15-07, and the words “gas” and “vapor” are pluralized.

This revision is approvable, as it is administrative in nature.

* In section 33.1-15-20-04.3, the reference to gas containing hydrogen sulfide is removed and replaced with “at production facility.”

This revision is approvable, as it is administrative in nature.

H. Revisions to Section 2.15 (Respecting Boards)

*North Dakota is also revising section 2.15 (Respecting Boards) located in North Dakota's EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures.

This revision is approvable. Section 128 of the CAA requires SIPs to contain requirements for Boards that approve permits and/or enforcement actions and conflict of interest requirements for state personnel and Boards. North Dakota's initial submittal of these requirements was approved by the EPA on July 20, 2013 (78 FR 45866). When the North Dakota Department of Environmental Quality (DEQ) transitioned from the North Dakota Department of Public Health, their Conflict of Interest requirements changed.

This revision updates section 2.15 of the SIP to match the current DEQ requirements.

III. Proposed Action

For the reasons described in section II of this proposed rulemaking, the EPA is proposing to approve North Dakota's August 3, 2020, submittal revisions to NDAC, Article 33.1-15 (Air Pollution Control) except for revisions to 33.1-15-25 (Regional Haze Requirements) which were addressed in a separate rulemaking. The EPA is also proposing to approve North Dakota's revisions to section 2.15 (Respecting Boards) located in North Dakota's EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures. Our action is based on an evaluation of North Dakota's revisions against the requirements of CAA section 110(a)(2)(c) and regulatory requirements under 40 CFR 51.160 – 164 and 40 CFR 51.166.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions described in section II. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the

FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 22, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8

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